

**I.C. No. 16-033652, Melissa Greene, Plaintiff, v. Forsyth County, Self-Insured Defendant-Employer, and PMA Companies, Defendant-Administrator**

THIS COMPROMISE SETTLEMENT AGREEMENT, A FINAL SETTLEMENT AND RELEASE, was made and entered into on the 19<sup>th</sup> day of March, 2018, by and between Plaintiff and Defendants.

On June 29, 2016, Plaintiff, who was then age 48 with a date of birth of [REDACTED], was employed as a Landscape Technician by Defendant-Employer and had been so employed for approximately twelve years. The parties agree that Plaintiff's average weekly wage on June 29, 2016 was \$616.09, resulting in a compensation rate of \$410.73. On that date, Plaintiff encountered a snake and tripped and fell resulting in an injury to her right shoulder. Plaintiff later claimed that she injured her neck as well.

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The parties expressly understand and agree that the foregoing paragraphs concerning Plaintiff's medical treatment are intended only as a summary of the course of that treatment. The examinations, evaluations, and treatment received by Plaintiff are more fully set forth in the medical and rehabilitation reports submitted to the North Carolina Industrial Commission along with this agreement as Exhibit A. Plaintiff and Defendants certify that said exhibit contains all medical and rehabilitation reports relative to Plaintiff's June 29, 2016 injury of which they now have knowledge and possession. The contents of those reports are incorporated here by reference as if fully set forth. The parties further certify that Exhibit A constitutes a full and complete copy of all relevant and material medical, vocational, and rehabilitation reports known to exist as required by N.C.G.S. § 97-82 and 04 NCAC 10A .0502. Plaintiff acknowledges that Defendants have agreed to the terms of this settlement and will make the payments called for reasonably relying upon that certification. The parties to this agreement waive further hearings before the North Carolina Industrial Commission and, in presenting this agreement for approval, represent that they have made available to the Commission with said agreement all relevant and material medical, vocational, and rehabilitation

reports known to exist. In this connection, the parties stipulate and agree to waive any rights they may have to contest the approval of this agreement based upon any failure to provide copies of medical, vocational, or rehabilitation records to the Industrial Commission with this agreement for approval.

Plaintiff had returned to work with the employer, but has since resigned for reasons unrelated to the claim.

By signing this document, Plaintiff, by and through counsel, certifies to Defendants and to the North Carolina Industrial Commission that she makes no further claim for total or partial wage loss as a result of her June 29, 2016 injury.

Defendants contend that Plaintiff has reached maximum medical improvement and is able to return to work, that she is not entitled to all of the benefits now being claimed, and that, at most, her future entitlement to benefits is limited to those payable for the permanent partial impairment rating of 20 percent (%) to the right arm assigned by Dr. Dalldorf.

The parties have conferred together, at a mediated settlement conference conducted on March 19, 2016 by Amy Berry, Plaintiff being represented by The Deuterman Law Group, Attorneys of Greensboro, North Carolina, and Defendants being represented by Goldberg Segalla, L.L.P., Attorneys of Raleigh, North Carolina, and have decided that it is in the best interests of all concerned to enter into an agreement where all matters and things in controversy arising out of the June 29, 2016 injury would be settled with the payment to Plaintiff of SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$75,000.00), in one lump sum, without commutation, in settlement of all

claims under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted. This sum represents the settlement of a disputed matter and not an admission of liability, and is in lieu of any disability or other workers' compensation benefits, including but not limited to those which might otherwise have been claimed for a change in condition or progression of any condition which might develop in the future, medical, death or any other benefits, which are or may be due Plaintiff, her dependents, her estate or any other representative of Plaintiff now or at any time in the future pursuant to the North Carolina Workers' Compensation Act. The parties and their respective counsel also stipulate and agree that this settlement is fair and just, that the interests of all parties and of any person or entity, including a health benefit plan, that paid any of the medical expenses of Plaintiff have been considered, and that there is a need for finality in this litigation.

Plaintiff contends that she suffered significant injury to her right shoulder while working for the Defendant-Employer, which has permanently and totally disabled her from any further gainful employment. Plaintiff's date of birth is -- -- --, and she is currently fifty (50) years old, which calculates a statutory life expectancy under N.C.G.S. §8-46 of 29.3 years, or 351.6 months, or 1523.6 weeks.

Defendants agree to pay or cause to be paid to Plaintiff, the lump sum of Seventy-Five Thousand (\$75,000.00) dollars in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act and this is the only payment to which the employee will be entitled for her entire life for the injury described above. This sum is strictly in consideration of

Plaintiff's lost wages in the past and future lost wages and unpaid medical expenses and/or future medical expenses. No part of the consideration paid by the Defendants in the settlement of this claim is for medical expenses paid by a group health insurance carrier, or paid by any other entity. Accordingly, the payments described here below are deemed and intended by the parties to be lifetime payments pro-ratable over the Plaintiff's expected remaining lifetime beginning the day after this agreement is approved by the Industrial Commission.

It is anticipated that Eighteen-Thousand Seven Hundred and Fifty (\$18,750.00) dollars of this Seventy-Five Thousand (\$75,000.00) dollar sum shall be paid to Plaintiff's counsel, leaving a total net recovery to Plaintiff of Fifty-Six Thousand Two-Hundred Fifty (\$56,250.00) dollars as compensation for future wage loss over the Plaintiff's remaining lifetime and in lieu of those periodic workers' compensation benefits to which the Plaintiff may be or could have become entitled as a result of the injuries described herein above. This payment shall be allocated to the Plaintiff's expected lifetime beginning the day after this agreement is approved by the Industrial Commission. This sum shall be paid specifically as consideration for, and in lieu of, all wages which may have been earned by the Plaintiff over the remaining 29.3 years, or 351.6 months, or 1523.6 weeks of her life at the rate of \$159.98 per month, or \$36.91 per week.

The parties have considered Medicare's interests with regard to the settlement of the medical portion of this claim, as required under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), *et seq*, and the current MSP regulations, codified at 42 C.F.R. § 411.20, *et seq*.

The parties have considered whether Medicare has made any payment, conditioned upon possible reimbursement, for medical services allegedly related to the June 29, 2016 injury for which Defendant-Insurer may be deemed responsible by Medicare as a primary payer. Plaintiff represents and stipulates that Medicare has not paid any medical bills whatsoever, whether associated with the June 29, 2016 injury or otherwise, since Plaintiff is not a Medicare beneficiary and is not Medicare eligible. Accordingly, the parties rely upon Plaintiff's representation that Medicare has not made any payment for medical care on behalf of Plaintiff, and there is no possible Medicare conditional payment issue. Plaintiff agrees to hold Defendants harmless for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services ("CMS") and/or the Benefits Coordination & Recovery Center ("BCRC") may pursue based upon any incorrect or inaccurate information provided by Plaintiff. Plaintiff further agrees that based upon the parties' consideration of Medicare's reimbursement rights in the negotiated terms of this settlement, there is no valid right to a private cause of action for damages because Defendants have not failed to provide for primary payment and/or appropriate reimbursement.

The parties have further agreed to resolve the portion of Plaintiff's claim involving future medical treatment. It is not the intention of the parties to this agreement that responsibility for future medical treatment related to the June 29, 2016 injury will be shifted from Defendants to Medicare or the federal government. The parties understand that in certain circumstances, a Workers' Compensation Medicare Set-Aside Arrangement ("WCMSA") may be necessary to protect the interests of Medicare and/or

Plaintiff as a current or future Medicare beneficiary in conjunction with the full and final settlement of a workers' compensation claim. The parties have considered and evaluated whether a WCMSA should be established in this case. Considerable attention has been given by all parties to Plaintiff's potential for future entitlement to such benefits and reasonable consideration of Medicare's interest.

Based upon the relevant and material medical records in this case, the parties do not anticipate any further medical treatment will be necessary or recommended for the June 29, 2016 injury. Furthermore, a WCMSA would not be reviewed by CMS in this case, even if voluntarily submitted, because the settlement does not meet the current workload review thresholds. Therefore, based upon the existing criteria and suggested guidelines presently in effect, the parties believe that a WCMSA is not necessary or required to protect Medicare's interests and no portion of this settlement should be apportioned to fund a WCMSA.

Defendants have paid all undisputed medical expenses related to Plaintiff's June 29, 2016 injury, a list of which is attached as Exhibit B. However, there are medical expenses that Plaintiff contends are related to her June 29, 2016 injury that have not been paid by Defendants because those expenses are disputed, a list of which is attached as Exhibit C. Plaintiff, will notify the respective unpaid medical providers in writing of her responsibility to pay. The parties and their respective counsel stipulate and agree that the positions of all parties to this agreement are reasonable as to the payment of medical expenses. Any obligation of any party to pay an unpaid disputed

medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under N.C.G.S. § 97-26.

Plaintiff certifies that any and all known liens or potential liens involving Medicare, Medicaid, the Internal Revenue Service, Child Support Enforcement, or other agencies of federal, state or local government have been revealed to Defendants, and Plaintiff agrees to hold harmless Defendants regarding any such liens. The parties acknowledge that Plaintiff's certification contained in this paragraph is a material representation relied upon by Defendants in entering into this agreement.

Plaintiff has agreed to settle her case for less than the full amount of reasonably anticipated future benefits for a variety of reasons. Settlement will provide for a known amount of recovery, eliminating uncertainty as to the future, such as the possibility that Plaintiff will die in an accident or from an unrelated health problem. Further, Plaintiff will derive emotional benefit from the elimination of the workers' compensation system from her life and from the increased control she will have over her medical treatment and other aspects of her life.

Plaintiff represents to the North Carolina Industrial Commission that by execution of this agreement, she knowingly and intentionally waives her right to further benefits under the North Carolina Workers' Compensation Act, but it is agreed that no rights other than those arising under that Act are compromised or released by this Agreement.

The parties acknowledge that any opinions stated by physicians or other medical providers regarding the nature and extent of Plaintiff's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they



are doing so with the knowledge that such opinions may be incorrect. Plaintiff further acknowledges that her condition may be progressive and that recovery is uncertain and indefinite. Accordingly, Plaintiff and Defendants agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians or other medical providers regarding the diagnosis or prognosis of any injury, whether now known or unknown, resulting from the June 29, 2016 injury.

Defendants agree to pay all costs incurred, as that term is currently defined by the North Carolina Industrial Commission and agree to waive all credits for Plaintiff's share of North Carolina Industrial Commission fees.

Plaintiff agrees that in making this Agreement, she was not influenced by any representations or statements regarding her condition, the nature of her injuries, or any other matters concerning her claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of Defendants; that the facts in connection with her employment and with her resulting injuries and impaired physical condition, if any, are fully known, understood, and comprehended by Plaintiff, and that her rights under the Workers' Compensation Act are thoroughly and completely understood by her.

In consideration of the compensation payments recited, and the medical benefits which shall be paid upon approval of the North Carolina Industrial Commission, Plaintiff has and does release and forever discharge not only for herself but also for her heirs, next of kin, and/or personal representative(s) and Defendants respectively, of and from

any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims, which against Defendants, she ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the June 29, 2016 injury, which give rise to this claim for compensation and for any subsequent disability sustained by her, or medical bills incurred by her.

Plaintiff expressly agrees that any and all rights which she may have or which may arise as a result of any change of condition under and by virtue of the provisions of Chapter 97 of the North Carolina General Statutes, giving her the right to reopen this claim for compensation or medical benefits at any time within two years from the date of the last payment of compensation under an Award by the North Carolina Industrial Commission are waived, and Defendants respectively, are expressly and particularly released from any and all further liability to her by reason of any right or claim Plaintiff, Plaintiff's heirs, next of kin, and/or personal representative(s) may have, or which may arise, to reopen this action and claim further benefits, whether compensation, medical, or otherwise.

All parties to this agreement specifically stipulate that the North Carolina Industrial Commission may consider the matters now before it in passing on this compromise agreement, subject to the conditions previously stated. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission by its award duly issued, and the same shall be binding upon all parties when approved by said Commission. All parties further agree that, in the event the North Carolina

Industrial Commission does not approve this agreement, nothing contained within this document shall be construed as an admission of liability in any future proceedings before the North Carolina Industrial Commission or any other tribunal.

It is further understood that the rights and remedies of Plaintiff against Defendants as a result of Plaintiff's employment and her June 29, 2016 injury are governed and controlled by the North Carolina Workers' Compensation Act, and that all of such rights are being compromised, adjusted and forever resolved.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

By the signatures below, Plaintiff and Defendants accept the terms of the settlement described here.

Melissa Greene  
Melissa Greene, Plaintiff

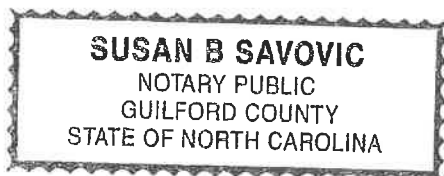
Consented To:  
Casey Francis  
Casey Francis, Attorney for Plaintiff  
North Carolina State Bar No. 42832

NORTH CAROLINA  
Guilford COUNTY

Personally appeared before me this 22 day of March, 2018, Melissa Greene, who, being first duly sworn, acknowledged the execution of the foregoing agreement for the purposes and considerations therein expressed.

My Commission expires:  
April 13, 2021

Susan B Savovic  
Notary Public



Forsyth County,  
Self-Insured Defendant-Employer

BY: Gregory S. Horner  
Gregory S. Horner, Attorney for  
Defendants  
North Carolina State Bar No. 35346

PMA Companies,  
Defendant-Administrator

BY: Gregory S. Horner  
Gregory S. Horner, Attorney for  
Defendants  
North Carolina State Bar No. 35346



BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

FILE NUMBER 15-013187

SAMANTHA LOWE  
(Hereinafter called "Employee")

FORSYTH COUNTY  
(Hereinafter called "Employer")

PMA COMPANIES  
(Hereinafter called "Servicing Agent").

## AGREEMENT OF FINAL SETTLEMENT AND RELEASE

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 14th day of September, 2015, by and between Samantha Lowe, hereinafter called the Employee, and Forsyth County, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

WITNESSETH:

WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 5th day of January, 2015, the relationship of Employer-Employee having existed; and

[illegible]